

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number <b>Q78578</b>	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number <b>10/718,694</b>		Filed <b>November 24, 2003</b>
	First Named Inventor <b>Akira OOSAWA</b>		
	Art Unit <b>2624</b>		Examiner <b>Akililu K. Woldemariam</b>
<p style="text-align: center;">WASHINGTON OFFICE <b>23373</b> CUSTOMER NUMBER</p>			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record.</p> <p>Registration number    <u>59,561</u></p> <p style="text-align: right;"><u>/Dion R. Ferguson/</u> Signature</p> <p style="text-align: right;"><u>Dion R. Ferguson</u> Typed or printed name</p> <p style="text-align: right;"><u>(202) 293-7060</u> Telephone number</p> <p style="text-align: right;"><u>June 10, 2009</u> Date</p>			

**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Docket No: Q78578

Akira OOSAWA

Appln. No.: 10/718,694

Group Art Unit: 2624

Confirmation No.: 3220

Examiner: Akililu K. Woldemariam

Filed: November 24, 2003

For: IMAGE PROCESSING APPARATUS

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**MAIL STOP AF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated December 10, 2008, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue. Claims 1-25 are the claims that have been examined in the application. Claims 1, 4-7, 10-13, 15-17, 19-22 and 25 stand rejected under 35 U.S.C. 102(b) as being anticipated by Kano. Claims 2, 3, 8, 9, 14, 18, 23 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kano, as applied to claims 1, 7, 13, 17 and 22, above in view of Yanagita et al., "Yanagita".

The Examiner provides the same basic rejection of independent claim 1 as was provided in the previous Office Action, dated May 15, 2008. Therefore, the following comments are

mainly directed toward the Examiner's Response to Arguments, found on page 21 of the December 10, 2008 Office Action and Advisory Action dated April 24, 2009.

In response to Applicant's argument that Kano fails to disclose the correction means recited in claim 1, as well as the judgment means recited in claim 1, the Examiner argues that FIG. 2, page 454, column 2 of Kano anticipates both the claimed judgment means and the claimed correction means. Specifically, the Examiner alleges that the search of ROIs for local matching anticipates the judging means, as the search of ROIs allows for proper density distributions to be recovered from improperly exposed radiographs, further allowing for consistent density and contrast in temporally sequential chest images. The Examiner also alleges the nonlinear density correction to adjust the density and contrast in the two digitized images anticipates the claimed correction means.

Applicant submits that neither the judgment means nor the correction means claimed in claim 1 are anticipated by Kano. First, the correction means claimed in claim 1 recites "a correction means for correcting an image which has been judged to have undergone image processes, to correct the image to a state equivalent to its original state prior to the image processes, based on the image processing condition data attached thereto." As noted in the Response dated August 15, 2008, the nonlinear density correction ("warping") does not return the images to a state equivalent to its original state, but merely adds another layer of image correction to the digitized images. See page 454, col. 2 ("A nonlinear density correction ... is applied as a preprocessing"). Kano fails to disclose, explicitly or implicitly, that the chest images are corrected back to a state equivalent to its original state prior to the image processes at

any point during the method disclosed therein, and specifically, before image subtraction is performed. Rather, as noted on page 456 of Kano, the warping is maintained throughout the image subtraction process. Thus, the image is never corrected back to a state equivalent to its (own) original state. Any processes of Kano simply match a warped and non-warped image but in neither situation does a particular image revert to it original state.

Second, the judgment means claimed in claim 1 recites “a judgment means for judging whether the two images have undergone image processes, based on the process confirmation data attached to each of the two images.” The Examiner alleges that the search of ROIs for local matching anticipates this claim element. However, the search of the ROI merely indicates that corresponding elements are determined between two images, not that the images are judged as to whether the images have undergone image processes. Further, since EVERY image in Kano undergoes some sort of image processing (at least the nonlinear density correction), there is no need to judge whether images have undergone image processing, and Kano fails to disclose, explicitly or implicitly, the recited judging means, based on confirmation attached to the images. The processes of Kano further do not operate based on data attached to the image. The process data can simply overwrite prior data without the claimed attached data.

During an Examiner Interview conducted April 9, 2009, the Examiner argued that the claims need to be “enhanced to be directed toward the actual invention” described in the specification. Specifically, the Examiner argued that based on the summary of the invention on pages 5 and 6 of the specification, the correction means appears to be the same as the inter image calculation, which means finding the difference in the images. According to the Examiner, the

correction means is merely the realignment/reorientation of the images, which is not an invention.

However, the Examiner appears to be ignoring that claim 4, among others, recites a positional alignment means in addition to a correction means and an inter image calculation means. In other words, the claims recite that each of these processes are performed independently and thus, cannot be interpreted as the Examiner argues. Further, the claims are written such that correction means do not perform realignment/reorientation of the images.

In the Advisory Action dated April 24, 2009, the Examiner states the following:

Examiner disagreed with applicant because Kano discloses processes, to correct the image to a state equivalent to its original state prior to the image processes, based on the image processing condition data attached thereto (see page 454, column 1-2, warping image referred to current image and unwarping or nondistorted image referred to original image and page 461, column 1-2 and figure 12).

However, the Examiner cannot identify a portion of Kano that explicitly indicates that the images upon which subtraction is performed are corrected back to a state equivalent to its original state. The Examiner argues that the pre-processing corresponds to the correction, but the pre-processing, as well as the “warping”, are image processes which occur prior to the subtraction of the images, and which are not corrected, or undone, prior to the subtraction of the images. The Examiner is impermissibly relying on inherency. In Kano, the cited discussion at page 461 refers to relative warping of images taken at entirely two different points in time. Thus, the warping does not indicate return to an original state prior to process. As stated previously, the warping is additional process that takes one image even further from its original

state. The cited portion not only fails to teach this aspect of claim 1, but actually teaches away from the claim.

**Conclusion**

Therefore, for the reasons noted above, as well as those noted in the Response filed August 15, 2008, claim 1 is patentable over the applied art.

Claims 7, 13, and 17 recite similar elements to claim 1, and are patentable for reasons analogous thereto. Claims 4, 10, 15, 19, 21, 22 and 25 are patentable at least by virtue of their respective dependencies. Claims 2, 3, 5, 6, 8, 9, 11, 12, 14, 16, 18, 20, 23 and 24 are dependent from claims 1, 7, 13 and 17, respectively. Because Kano fails to disclose all of the aspects of claims 1, 7, 13 and 17 and because Yanagita fails to cure the deficient disclosure of Kano, claims 2, 3, 5, 6, 8, 9, 11, 12, 14, 16, 18, 20, 23 and 24 are patentable over the applied art.

Respectfully submitted,

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WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

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